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MONGOLIA IN TRANSITION:
THE NEW LEGAL FRAMEWORK FOR
LAND RIGHTS AND LAND PROTECTION

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I. INTRODUCTION'

Enjoying only limited world recognition of its independence, Mongolia was once referred to as the Soviet Union's de facto sixteenth republic.' Under Yumjaagiin Tsedenbal, the leader of the Mongolian People's Revolutionary Party (MPRP) since 1952 and head of state since 1974, Mongolia developed a centrally planned economy, accepted the presence of Soviet troops, and tightened the already strong political and economic ties to its northern neighbor.³ In 1965, Mongolia maintained diplomatic relations with only 35 states, and by 1970 conducted over 90% of its trade with Comecon countries.⁴

In 1984, however, Tsedenbal was removed from power, allowing a more moderate government to be formed under the leadership of Jambyn Batmönh.⁵ For the next 5 years, Batmönh led a modest program of political and economic reform, aimed at increasing

'Primary research for this paper was carried out in Ulaanbaatar, Mongolia in March 1992 during a legal assistance project coordinated by Institutional Reform and the Informal Sector (IRIS) and funded by the United States Agency for International Development. The author wishes to thank Professor James V. Feinerman for providing the opportunity to participate in this project, and for his encouragement and suggestions.

²See Shapiro, Starting from Scratch, THE NEW YORKER, Jan. 20, 1992, at 39.

³Id. at 50; E. MILNE, J. LEIMONE, F. ROZWADOWSKI & P. SUKACHEVIN, THE MONGOLIAN PEOPLE'S REPUBLIC: TOWARD A MARKET ECONOMY 4 (1991) [hereinafter MILNE].

⁴Id. at 4, 6.

⁵Id. at 4; Shapiro, supra note 2, at 40.

political openness and economic freedom, and decentralizing government **decision-making**.⁶ Further, while the Soviet Union began withdrawing troops and other personnel, Mongolia began to open up to **the rest** of the world, conducting diplomatic relations **with over 100 states by 1990**.⁷

As the outside world was increasingly visible to Mongolians, demands for greater political and economic freedom intensified. In the winter of 1989-90, protests by students and labor forces led to the formation of a new government in March 1990.⁸ Mongolia's first multiparty elections were held, resulting on July 29 in a majority victory for the MPRP in both bodies: the Great People's Hural and the Small **Hural**.⁹ Under Punsalmaagiin Orchirbat, elected president in September, reforms were accelerated."

A new legal framework for land rights and land protection, including the limited recognition of private land ownership, will play a central role in these reforms. As is the case in the Central and East European societies in transition, the recognition of private property rights is viewed as necessary not **only for the formation of a market-oriented economy, but also for**

⁶MILNE, supra note 3, at 9.

⁷Id.

⁸Id.; Shapiro, supra note 2, at 40.

⁹Id.

¹⁰Id.

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the development of democratic government.

This paper will examine the new legal framework for land rights and land protection as an element of Mongolia's economic and political transition, focusing primarily on the draft law on land.¹¹ First, it will describe the geographical, historical, policy, political and legal contexts of the current land reform effort. The paper then will analyze the emerging legal framework for land rights and land protection, focusing on ownership and possessory rights, land protection and land use, and enforcement and dispute resolution. Next, to help understand the legal framework, the attitudes of policy-makers and drafters are analyzed. The paper concludes with a series of recommendations to help animate further discussions on the land law.

¹¹The draft discussed in this paper is the draft of the Land Law of Mongolia [hereinafter Draft] that was the working document for the Land Law Working Group [hereinafter Working Group] during its meetings from Mar. 13-23, 1992.

The Working Group, which is in charge of revising the Draft, is comprised of deputies of Mongolia's parliamentary bodies (the Great People's Hural and the Baga Hural), and representatives from various ministries and from the government. From Mar. 13-23, 1992 participants included Samdangiin Banzragch, Deputy Minister, State Committee for Nature and Environmental Protection (Mongolia's environmental ministry); Dr. Gongoriin Purevtseren, Director, Research Institute for Land Policy; Mendsaihan, Chairman, Standing Committee on Economic Affairs, Deputy of the Baga Hural.; Tseveenjavyn Uuld, Member, Standing Committee on Economic Affairs, Deputy of the Baga Hural and the Great People's Hural; S. Surenjav, Chief, Legislative Branch, Ministry of Justice; Mr. Bayaraa, representative from the Government.

From Mar. 13-23, 1992 the author participated in the Working Group meetings as a legal consultant, leading article-by-article discussion and offering technical advice. The assistant coordinator of IRIS's Mongolia project, economist Georges Korsun, also participated in these meetings.

II. BACKGROUND

Legal reform does not take place in a vacuum; to be rationally conceived and effectively implemented, it should take into account a wide range of contextual **factors**.¹² In the case of land law reform, the geography of the land itself, the history of land relations, the politics, and previous laws relating to land all should be understood before evaluating the legal framework which has been proposed for land rights and land protection.

A. Geography

The geography of Mongolia is relevant to land reform in at least four ways: geopolitically, climatically, in terms of land use and demographically.

1. Geopolitics. Located between China and Russia, **Mongolia has been at the center of Sino-Russian tensions., Until 1911, Mongolia was a Chinese province.**¹³ In 1912, "Outer" Mongolia accepted Russian protection of its independence; but in 1919, China again gained **control**.¹⁴ Finally, in 1921, a combined Soviet and Mongolian force defeated Chinese and Byelorussian troops, and the Mongolian People's Republic was

¹²This rule applies to economic as well as legal reform.

¹³NBC NEWS & RAND MCNALLY, WORLD ATLAS & ALMANAC 167 (1991) [hereinafter ATLAS].

¹⁴Id.

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declared in 1924.¹⁵ Russia, however, retained control and kept
garrisons in Mongolia.¹⁶ Thus, partly for reasons of geography,
Mongolia became the second communist country, after only the
Soviet Union itself.

2. Climate. Mongolia is large hut landlocked,
possessing over 604,000 square miles of territory.¹⁷ Its
terrain varies from northern and western mountains, to vast
steppes in the east and desert in the south which together cover
three fourths of Mongolian territory.* The average altitude is
1600 meters above sea level; winters are long and cold, with
below freezing temperatures from October to March, and an average
January temperature of -25 degrees celsius.¹⁹ Temperatures
vary as much as 30 degrees Celsius in one day, and precipitation
is very low.²⁰

3. Land Use. During communist rule, land was
classified in six categories according to its purpose. According

¹⁵Id.

¹⁶A. BOYD, AN ATLAS OF WORLD AFFAIRS 148 (1987).

¹⁷MILNE, supra note 3, at 2.

¹⁸Id.

¹⁹Id.

²⁰Id.; ATLAS, supra note 13, at 167.

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to the latest available **statistics**,²¹ 78.9% of **Mongolian** territory was for agricultural purposes. More specifically, 0.8% was designated as arable land for crop growing, 1.3% as meadows, and about 77% as pasture land for animal grazing. Cities and **towns occupied 0.3 % of the land, forests 9.7%, water and surrounding areas 1%, reserve pasture land 5.1%, and land for special state needs 5%.**²²

The pasture land, spread across large parts of Mongolia's territory, varies widely in quality. About 25% of Mongolia's pasture-land, located primarily in the east and central **aimags**²³ and in Ara-Khangai and northern **Bayan** Khongor, is of excellent harvest **yield.**²⁴ About 50% is of average yield, spread out in the western lake region. Additional pasture-land, of lower harvest yield, is found in the more mild parts of the **Gobi region.**²⁵

Arable land is distributed more unevenly. Most is found in

²¹**These** statistics were provided at the Working Group meeting, Mar. 14, 1992.

²²**Land** for special state needs includes land for military facilities, border areas, etc. Reserve land is comprised of special zones for emergency use by herders, in case of drought, for example.

²³**Aimags** are the administrative units into which Mongolia is divided. In addition to the aimags, there is the capital city, which is a separate administrative unit. See infra, notes 96-99.

²⁴**T. DUPUY & W. BLANCHARD, AREA HANDBOOK FOR MONGOLIA 309** (1970) [hereinafter **HANDBOOK**].

²⁵**Id.**

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the Orkhon and Selenga river basins in the north and **north-central districts**.²⁶ Land is also exploited for crop growing in **the massifs** adjacent to the lower watersheds in the Bulagan, Selenga and **Tüv aimags**.²⁷ In the east, west and south, only **irrigation agriculture is practicable**.²⁸

Thus, in terms of agricultural land use, the official designations for the most part correspond to actual land characteristics. About **80%** of Mongolia's land is indeed grassland, particularly suitable for animal **husbandry**.²⁹ **Together, poor soil, low precipitation and harsh climate help** explain the lack of arable **land**.³⁰ Expansion of arable land has depended largely on irrigation projects and on the acquisition and application of modern agrarian technology.

4. Demographics. The Mongolian population was an **estimated 2.1 million in 1989**.³¹ Today, about one fourth of the population **lives** in the capital city of **Ulaanbaatar**.³² Urbanization has accelerated over the last two decades, and the proportion of the population living in urban areas rose from 44%

²⁶Id. at 310.

²⁷Id.

²⁸Id.

²⁹MILNE, supra note 3, at 2.

³⁰HANDBOOK, supra note 24, at 307.

³¹MILNE, supra note 3, at 2.

³²Id.

in 1969 to 58% in 1990.³³ According to recent reports, however, the population flow has reversed, with the rural proportion of the population **increasing**.³⁴ The literacy rate is **80%**.³⁵

Mongolia is ethnically very homogeneous; 90% of its **population is Mongol**.³⁶ **Ethnic minorities include Kazakhs (4%), Chinese (2%) and Russians (2%)**.³⁷ Perhaps for historical reasons, there currently seem to be significant concerns about relationships between Mongols and these **minorities**.³⁸ Another factor relating to this attitude might be the nationalistic **cultural revival evidenced by the appearance of traditional**

³³Id.

³⁴According to the officials who provided this information, the new growth of the rural population is a result of the attractive prospect of private herding, allowed under the privatization law passed in mid-1991. Interview with officials of the Tiiv aimag, in the Tiiv aimag, Mongolia (Mar. 17, 1992).

³⁵ATLAS, supra note 13, at 166.

³⁶Id.

³⁷Id.

³⁸See, e.g., Shapiro, supra note 2, at 47. See also infra notes 130-131 and accompanying text (discussion of the land rights of foreigners). One provision of the land law draft prohibits the changing of the "tradition names of lands and waters inherited from the history of the Mongolian people," except by the Great Hural. Draft, art. 7. This provision exists **to prevent ethnic minorities from giving places minority ethnic names to places which someday might add credibility either to foreign land claims or ethnic secessionist movements, or otherwise lead to territorial disputes. The Kazakhs were specifically mentioned in this regard.** Working Group meeting, Mar. 18, 1992. A similar provision exists in art. 13 of Mongolia's Law on Land Use, reprinted in W.E. BUTLER, THE MONGOLIAN LEGAL SYSTEM: CONTEMPORARY LEGISLATION AND DOCUMENTATION 529 (1982).

pagodas, the historical rehabilitation of Genghis Khan, and plans to make the traditional Mongolian script mandatory for official government use.³⁹

B. History

Two aspects of Mongolian history are particularly relevant to contemporary land reform: the dominance of nomadic animal husbandry as a mode of economic and social organization, and the lack of a tradition of private land ownership.

1. Pastoral Nomadism. Pastoral nomadism has for centuries been the basic means of livelihood of the Mongolian people.⁴⁰ In the early 1920's, an estimated 90% of the Mongolian population was nomadic.⁴¹ Livestock represented the wealth, the medium of exchange, and the gauge of value of the Mongol:

The horse...was the "noble animal," the sheep the "economically indispensable" animal. Within their self-sustaining pastoral system, the herders derived marginal satisfaction of their needs with respect to food, clothing and shelter. The Mongolian rarely ate cereals, fruits, or vegetables; he was prejudiced against fish, pork, and eggs. His main dietary item was livestock meat and milk products...⁴²

On the other hand, crop production, fixed and largely

³⁹See, e.g., Shapiro, supra note 2, at 46.

⁴⁰Humphrey, Pastoral Nomadism in Mongolia: The Role of Herdsmen's Cooperatives in the National Economy, 9 DEVELOPMENT AND CHANGE 133 (1978).

⁴¹A. J. K. SANDERS, MONGOLIA: POLITICS, ECONOMICS, AND SOCIETY 85 (1987).

⁴²HANDBOOK, supra note 24, at 307.

repetitive, was traditionally abhorrent to the **herders**.⁴³ Buddhist dogmas, in fact, were against any digging of the **soil**.⁴⁴ Thus, on the eve of communism, "[t]he pastoral economy was not merely a 'traditional' sector of a national economy; it was the national **economy**."⁴⁵

2. Weak Tradition of Private Land Ownership. Although there is certainly no recent Mongolian tradition of private land **ownership**,⁴⁶ whether private ownership of land was ever recognized in pre-revolutionary Mongolia is **debated**.⁴⁷ Information on land relations before the rise of Genghis Khan in the year 1206 is particularly **obscure**.⁴⁸ Theoretical and practical evidence suggests, however, that individual ownership of land, if it was recognized at all, was not a developed institution in the period between 1206 and the implementation of the **new Mongolian Constitution in 1992**, which gives Mongolians

⁴³Id.; See also MONGOLIA: A COUNTRY STUDY 131 (R. Worden & A Matles, eds. 1991) [hereinafter COUNTRY STUDY].

⁴⁴Humphrey, supra note 40, at 148.

⁴⁵Id. at 139.

⁴⁶Since 1924, all land was state owned. W. E. BUTLER, supra note 38, at 524. See, e.g., Constitution of the Mongolian People's Republic, art. 10, reprinted in id. at 181.

⁴⁷Id. at 524.

⁴⁸One expert, however, has asserted that before the rise of Genghis Khan, land was privately owned. Interview with Dr. **Gongoriin Purevtseren, Director, Research Institute for Land Policy**, by Paul Tibbs, in Ulaanbaatar, Mongolia (Dec. 23, 1992).

the right to own **land**.⁴⁹

On a theoretical level, Mongolia's traditional pastoral nomadism probably precluded widespread development of private land ownership. Herders depended on seasonal migrations from one **type of grassland to another, as well as on rapid movement over different pasture areas**.⁵⁰ Therefore, individual Mongolians were not associated by their work and way of life with discrete pieces of land. Further, because they did not live in permanent structures, it is likely that nomadic families did not perceive **themselves or their shelters (ghers) as being connected over time** to any particular plot of land.

In practice, under the feudal system which preceded the founding of the People's Republic of Mongolia in 1924, Mongolia was divided into four aimags, which were subdivided into khoshuns.⁵¹ Land within a khoshun was, theoretically, commonly owned.⁵² Administration of land, however, was under the control of feudal **officials**.⁵³ Further, herders were not allowed to leave the khoshuns within which they moved their animals for **grazing**.⁵⁴

⁴⁹See infra, notes 107-111 and accompanying text.

⁵⁰Humphrey, supra note 40, at 135.

⁵¹Id. at 138.

⁵²Id.

⁵³Id.

⁵⁴Id.

Another account of pre-revolutionary Mongolia emphasizes the control of land by imperial and feudal leaders:

Land.. .became the property of the Emperor after the Manchu dynasty was established. Land use was then allocated "administratively," for pasture., agriculture, mineral deposits, military frontier guards, horse relay stations, and lamaist monasteries. When the Manchu dynasty was deposed in Mongolia, the Bogdo-Khan became the supreme owner of the land. Intermediate officials -- khoshun governors, "feudal lords" -- exercised their right of land use within designated boundaries under both periods.⁵⁵

Apparently, land use rights were inheritable and even traded.⁵⁶

These accounts agree, however, that individual ownership rights to land never developed in feudal Mongolia.

Under the 1924 Constitution of the Mongolian People's Republic, all land became state property; private land ownership was expressly prohibited.⁵⁷ Nationalization of land in Mongolia was facilitated by the lack of a tradition of peasant land ownership that characterized the European people's republics.⁵⁸ Indeed, because of Mongolia's experience with feudalism, "the vesting of land ownership...in the state itself was not a novel phenomenon to the Mongol psyche; the state was the plausible

⁵⁵Shirendyib, Some Aspects of the History of Land Rights in Mongolia, JOURNAL OF THE ANGLO-MONGOLIAN SOCIETY, vol. III, no. 1, 25-43 (1976), vol. III, no. 2, 41-47 (1976), summarized in W. E. BUTLER, supra note 38, at 524.

⁵⁶Interview with Dr. Purevtseren, supra note 48.

⁵⁷BUTLER, supra note 38, at 524.

⁵⁸SOCIALIST MONGOLIA 96 (State Publishing House of the Mongolian People's Republic 1981).

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successor to earlier supreme **authorities**."⁵⁹ Ownership of land by private individuals, on the other hand, apparently is a novelty to Mongolians.

C. Policy

Economic policy in Mongolia has often run counter to the country's -traditional economic and social forms. These traditions have challenged both the policies implemented during communism and those currently advanced as part of the economic transition.

1. Communist Policy. The first modern and coherent economic policy in Mongolia was that introduced by the Soviet Union beginning in 1921. During a first stage of communist economic development, referred to as "general democratic transformation" and lasting from 1921 to 1939, the economy , **remained primarily agrarian and underdeveloped.**⁶⁰ **Following an** unsuccessful attempt to collectivize herders, livestock remained in private hands; meanwhile, Ulaanbaatar began to be a center for industrial **development.**⁶¹

The second stage, called the "construction of the

⁵⁹**BUTLER, supra** note 38, at 524. "The novelty rather lay in the scheme of use allocation and concomitant rights, which in the Revolutionary period has meant the dispossession of the former privileged elements in **Mongolian society.**" Id.

⁶⁰**COUNTRY STUDY, supra** note 43, at 117.

⁶¹Id.

foundations of socialism," took place from 1940-1960.⁶² During this period, collectivization of herders finally was completed, and state farms were created to produce **crops**.⁶³ Central economic planning began in 1931.⁶⁴

The third stage, called "completion of the construction of the material and technical basis for socialism," was based on intensified growth of the industrial and agricultural **sectors**.⁶⁵ While the development of virgin lands by state farms led to dramatic increases in crop production, animal husbandry **stagnated**.⁶⁶

Collectivization and the promotion of crop production both ran counter to nomadic traditions favoring nomadic herding. Therefore, communist authorities were forced to use taxation, subsidies, legal regulations and directives, and direct coercion to implement economic policy.⁶⁷

2. Reform Policy. With respect to land, the most important aspects of current policy are the recognition and protection of private ownership of non-pasture land; the

⁶²Id.

⁶³Id.

⁶⁴Worden, 117.

⁶⁵Id. at 117-118.

⁶⁶Id. at 118.

⁶⁷MILNE, supra note 3, at 6; HANDBOOK, supra note 24, at 311.

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development of a market-oriented economy including markets for
agricultural **goods** and the establishment of credit institutions
necessary for agrarian development; the promotion of growth in
the crop-growing subsector of agriculture; and the vigorous
protection of natural resources.

Examination of the socio-economic context which history has
left reveals two contradictions which might make these policy
objectives more difficult to achieve. Crop growing continues to
be aggressively promoted, a policy whose effectiveness is
challenged by climatic and geographic realities,⁶⁸ and by the
traditional predisposition against crop growing as an
endeavor.⁶⁹

Agriculture continues to be an important part of the
Mongolian economy. Although agriculture's share of the economy
fell from over 60% in 1940 to 16% in the mid 1980's, the 1909
share was **20%.⁷⁰** In 1985, 33.8% of the labor force was employed
in the agrarian sector, and in 1986 agricultural products
accounted for about 60% of Mongolia's **exports.⁷¹** Animal
husbandry currently accounts for 70% of the agricultural product,
and **crop production** for about **30%.⁷²**

⁶⁸**See supra** notes 17-30 and accompanying **text.**

⁶⁹**See supra** notes 40-45 and accompanying text.

⁷⁰**MILNE, supra** note 3, at 13.

⁷¹**COUNTRY STUDY, supra** note 43, at 13.

⁷²**MILNE, supra** note 3, at 13.

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Further, the concept of wide-spread private land ownership has no precedent.⁷³ Arable and urban land, which is available for privatization,⁷⁴ will be the areas where this lack of experience might pose problems. On the other hand, a serious theoretical question remains as to whether or not pasture land should be privately owned at all.⁷⁵ As a matter policy, the Mongolian government has, at least for the time being, answered this question in the negative.⁷⁶

More generally, the challenges of reform are new to the Mongolian people. The strict social and economic controls of communism followed rigid feudalism and nomadic pastoralism's customary law which itself maintained a relatively orderly society.⁷⁷ Now, sudden change is the norm. Further, because of the hurried initial privatization effort, the term "privatization" carries negative connotations that are so strong

⁷³See supra notes 46-59 and accompanying text.

⁷⁴See infra notes 118-120 and accompanying text.

⁷⁵For example, the Director of the Research Institute for Land Policy, Dr. Purevtseren, has argued for restoration of a traditional tenancy system, not through privatization, but by creating the right to pass pasture use rights from generation to generation within a family. Interview with Dr. Purevtseren, supra note 48.

⁷⁶Working Group meeting, Mar. 16, 1992. This is also the position that seems to be stated by the new Constitution. See infra note 119 and accompanying text.

⁷⁷See Interview with Dr. Purevtseren, supra note 48.

that some legislators are reluctant to use the word **openly**.⁷⁸ The disorientation and erratic change inherent in the transition from one social order to another will test the patience, dedication and hope of policy makers and lay-people alike.

D. The Politics

The current political situation is an additional constraint on land reform. The communist Mongolian People's Revolutionary Party (MPRP) is still the dominant political force. Mongolia's 1960 Constitution guaranteed the monopoly of the **MPRP**.⁷⁹ But in April 1990, this provision was amended by the upper house of parliament, the Great People's Hural, and previously outlawed opposition parties were officially recognized."

Nevertheless, elections on July 29, 1990 resulted in the MPRP winning over 330 of the Great Hural's 430 **seats**.⁸¹ The primary **legislative** body, called the **Baga Hural**,⁸² is also

⁷⁸Working Group meeting, Mar. 16, 1992. See also infra, note 120 and accompanying text.

⁷⁹MILNE, supra note 3, at 33.

⁸⁰The Great People's Hural, only infrequently in session, had the power to adopt or amend the Constitution, elect the President of the Republic, and, at the President's recommendation, appoint the Vice-President, Prime Minister, General Public Prosecutor and the Chief Justice of the Supreme Court. The Great People's Hural had 430 deputies. Id.

⁸¹See IBC INTERNATIONAL RISK GUIDE, Jan. 1992, available in NEXIS library.

⁸²MILNE, supra note 3, at 33.

controlled by the MPRP, which currently holds 33 of 53 **seats**.⁸³ The Mongolian Democratic Party (MDP) holds 13 seats, the Social Democrats (SDP) 3 seats, and the National Progress Party (NPP) 3 **seats**.⁸⁴ Unrepresented opposition parties include the Mongolian Green Party and a religious **party**.⁸⁵

Elections are scheduled to take place again in June 1992. According to prevailing opinion, however, the MPRP is expected to retain political **control**.⁸⁶ Two reasons for the probable electoral success of the MPRP are, on the one hand, the **MPRP's** established political network and, on the other hand, the opposition's division, and lack of funds and organization. In March, a coalition was announced, bringing together several opposition parties with the object of increasing the opposition's political effectiveness.

Another political factor to consider is the division within the MPRP, between reformers and conservatives. The more moderate faction **of** the communist party was responsible for the constitutional amendments legalizing opposition parties, and have advocated rapid economic reform. The conservatives continue to argue for a continued central role for the state in society, and

⁸³**Interview** with Banzragchiin Odonjil, Full Time Legal Consultant, **Baga** Hural, in Ulaanbaatar, Mongolia (Mar. 23, 1992).

⁸⁴**Id.**

⁸⁵**Id.**

⁸⁶**Id.**

express many reservations regarding the transition to a **market-**oriented economy.

There are Central and East European examples of radical **reform, indeed** labeled by some as "revolution," where the communist party quickly and completely lost power to ambitious, capable and confident opposition groups. In this respect, Mongolia is mixed. With the exception of real property, privatization has taken place extremely rapidly. In other areas, including the development of full land ownership rights, there have been no such leaps and bounds, nor do any seem likely in the immediate future. While the status of Mongolia's transition suggests that the conservative faction of the MPRP does not have enough power to block measures aimed at reform, the continued strength of the MPRP must be kept in mind when evaluating existing legal measures, and assessing the possibility of future measures.

E. The Legal Context

There are at least three phases in Mongolian legal history as it relates to land reform: the period of customary law and feudal land relationships, the period of socialist property law, and the current period of transition.

1. Customary Law and Feudalism. According to one scholar, **"The** law of the Mongol tribes, based on a nomadic pastoral culture, represented the second great system of law in

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Eastern **Asia**."⁸⁷ The customary law of the tribes was consolidated and reduced to written form in the Great Yassa which was formally promulgated in **1229**.⁸⁸ The Great Yassa contained provisions relating to state administration and military **discipline, criminal and private law, and special customs for the** steppe region.*'

Under Mongolian custom, pastures were used according to a "traditional system of rotation of different animals over pastures, so that each kind of herd to eat the kind of grass best suited to it and yet leave the pasture ready for another herd which would use another grass." Even recently, customary law has influenced land relations in Mongolia. For example, the Ministry of Agriculture under the communist regime generally administered reserve land on the basis of decisions reached by **herdsmen using traditional gentlemen's agreements**.⁹¹

2. Socialist Property Law. Before reforms were initiated in 1990, Mongolia's economy was centrally planned and based on socialist ownership of the means of production, including **land**.⁹² As described, somewhat vaguely, in an

⁸⁷W.E. BUTLER, supra, note 38, at 3.

⁸⁸Id.

⁸⁹Id.

"Humphrey, supra note 40, at 135-136.

⁹¹Interview with officials of the **Tüv** aimag, supra note 34.

⁹²COUNTRY STUDY, supra note 43, at 118.

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official Mongolian document in 1981:

The establishment of state ownership of land in the context of a non-capitalist way of development was subsequently to serve as a reliable basis for the formation of a new social system in agriculture, as the most important prerequisite for the emergence of a socialist structure in the **countryside**.⁹³

Under Mongolia's socialist constitutions, ownership took one of two forms: state ownership and collective **ownership**.⁹⁴ While cooperatives, including agricultural associations, had a perpetual **right to occupy the land on which they carried out** their activities, land ownership remained vested in the **state**.⁹⁵

3. Current Administrative and Governmental Structure.

Under the new Constitution, Mongolia is divided administratively into aimags and a capital city; aimags are in turn subdivided into soums, and soums into bags; **and the capital city is divided** into districts, and districts into **horoos**.⁹⁶ Aimags, the capital city, soums and districts are represented by **self-**governing bodies called **hurals**.⁹⁷ The members of the hurals of the aimags and capital city are to be elected for four year

⁹³**SOCIALIST MONGOLIA**, supra note 58, at 96.

⁹⁴See, e.g., Constitution of the Mongolian People's Republic, art. 9, reprinted in BUTLER, supra note 38, at 180.

⁹⁵Id., art. 10, art. 12.

⁹⁶**The** Constitution of Mongolia, art. 57 (1) [hereinafter Const.].

⁹⁷**Const.**, art. 59 (2).

terms;⁹⁸ the hural in turn proposes a candidate for governor of its respective administrative unit.⁹⁹

The supreme legislative power in Mongolia is the Great Hural, composed of 76 members freely elected for four year terms.¹⁰⁰ Mongolia's head of state is the President,¹⁰¹ and its highest executive body is the Government, led by a Prime Minister.¹⁰² Judicial power is exclusively exercised by a judiciary, which shall be "independent and strictly guided by law."¹⁰³

F. Conclusion

There is an inherent tension in legal reform. On the one hand, the notion of reform itself suggests movement away from the status quo. On the other hand, any legal change that does not fully consider contextual factors might not be appropriate for a given society. Thus, a delicate balance must be struck between emphasizing the desirability of progress and realizing existing geographic, social, economic and political constraints. Well

⁹⁸Const., art. 59 (3).

⁹⁹Const., art. 60 (2).

¹⁰⁰Const., art. 21. Under the previous constitution, there were two legislative bodies: the Great People's Hural and the Baga Hural. See supra, notes 80, 82. There is only one legislative body, the Great Hural, under the new constitution.

¹⁰¹Const., art. 30-37.

¹⁰²Const., art. 38-45.

¹⁰³Const., art. 47-56.

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informed realism therefore should guide any legal reform efforts,
in Mongolia as in any other society in transition.¹⁰⁴

¹⁰⁴(footnote deleted)

III. THE LEGAL FRAMEWORK FOR LAND RIGHTS AND LAND PROTECTION

With the enactment of the proposed law on land, the framework for land rights and land protection in Mongolia will have four legal sources: the Constitution, which went into effect in January 1992; the Civil Code, as revised on January 1, 1992; the Land Law; and other legislation¹⁰⁵ with provisions concerning land.¹⁰⁶ This legal framework will recognize,

¹⁰⁵In addition to the Law on Land use, reprinted in W.E. BUTLER, supra note 38, at 526-537, many provisions of which will likely no longer be of effect as a result of the proposed new land law, see infra, note 106, there is article 3 of the Mongolian Petroleum Law which states: "All petroleum occurring in the entrails of the earth shall be exclusively the property of the State." The Foreign Investment Law, which "establishes a legal framework for foreign investment," Foreign Investment Law, art. 1, neither provides for nor prohibits the ownership of land by foreigners. The law does provide, however, that "[e]ntities with foreign capital participation in the territory of [Mongolia] shall pay fees for the use of land, forest, water and other natural resources." Id. art. 9.

It is unclear whether the Privatization Law, passed in 1991, applies to land. Article 3 identifies only the property of state-owned industries and enterprises as due to be privatized. A report by the chairman of the Government Privatization Commission on the progress of privatization makes no reference to land. D. Ganbold, Preliminary Results of Privatization Work Done in 1991 and Objectives for 1992. Guidelines issued for the privatization of state farms, Recommendations on Elaboration and Implementation of the Agricultural State-Owned Entities' Property Privatization Projects, and agricultural cooperatives, Guidelines for Privatizing the Property of the Agriculture Cooperatives, refer to real property such as wells and fences, but do not explicitly mention land.

¹⁰⁶All legislation must conform to the Constitution, which is at the top of the legal hierarchy. Therefore, in case of conflict between the Constitution on the one hand, and the Civil Code, Land Law or any other legislation on the other hand, the Constitution would prevail. This paper further assumes that where the Land Law conflicts with other legislation, the more recent legislation will prevail. The Land Law should contain a provision to this effect, stating that where inconsistencies or

protect, and regulate the transfer and termination of ownership and possession rights. It also will address land protection and land use concerns, and provide enforcement and dispute resolution mechanisms. Under this new framework, the State will continue to play a large role as a land owner and decision-maker. **Land** rights will also be incomplete and insecure in a number of ways. As a result, the effectiveness of the incentives that normally flow from private land regimes will be reduced.

A. Regulation of Ownership and Possession Rights

1. Recognition of Land Rights

a. Ownership Forms and Types of Owners. Various forms of ownership may exist in Mongolia. The Constitution requires that the State recognize "all forms of public and private **ownership**."¹⁰⁷ Similarly, the Civil Code states that **there** is private, public, as well as mixed property in **Mongolia**.¹⁰⁸

Land owners in Mongolia include the State and Mongolian natural **persons**.¹⁰⁹ The land law provides that "[t]he State and

contradictions arise between the Land Law and other earlier laws, the Land Law will prevail. This follows the so-called "**later-in-time**" rule, whereby more recent legislation prevails over earlier legislation.

¹⁰⁷**Const.**, art. 5 (2).

¹⁰⁸**Civil Code**, art. 59.

¹⁰⁹**Note** that in Mongolian legal usage, the term "citizen" is used rather than "legal person." Thus, "citizen" does not comprehend legal persons (e.g. corporate entities). Instead, the term "entity" or "organization" is used to indicate "legal

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the [natural persons] of Mongolia may own **land**."¹¹⁰ According to the Constitution, all land, except that given to Mongolian natural persons, and all subsoil rights, resources, water, forest and fauna, are **state-owned**.¹¹¹

The Civil Code recognizes the property rights of cooperatives, public organizations, religious organizations, foreign citizens and legal persons, and international organizations, but does not explicitly extend these rights to **land**.¹¹² Further, the Civil Code seems to allow Mongolian legal persons to own property, but here, too, does not explicitly

person." To avoid confusion, this paper will use the terms "legal person" and "natural person" rather than the Mongolian usage.

¹¹⁰**Draft, art. 4(1).** Similarly, the Civil Code provides: "**Citizens of [Mongolia] may possess as private property the land...**" Civil Code, art. 93. An apparently contradictory provision states that "land shall be in state ownership." Civil Code, art. 93. Either "possess as private property" does not mean the same thing as "ownership," or the apparent contradiction is merely a problem of translation. Further, a vague provision states: "The ownership of land and natural resources will be under the sovereign right of [Mongolia]." Civil Code, art. 63. Here, the meaning of "under the sovereign right" is unclear. As noted, however, at supra notes 107-110 and accompanying text, the **Constitution and the land law draft clearly establish a right for private land ownership.**

¹¹¹**Const. art. 6 (2).** The question here arises whether a Mongolian natural person can transfer his or her land to a legal person or foreign person. See discussion, infra note 130 and accompanying text.

¹¹²See Civil Code, art. 96 (cooperatives and public organizations), art. 97 (religious organizations), art. 99 (foreign citizens), art. 100 (foreign legal persons), and art. 101 (international organizations).

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extend this right to **land**.¹¹³ The Constitution and the land law draft neither recognize nor prohibit the rights of these foreign persons and domestic legal persons to own land.

b. Possession of Land. Land may be possessed by **persons other than the owner. The Civil Code recognizes the** discrete rights to possess, use and dispose of **property**.¹¹⁴ Further, among the rights and freedoms guaranteed by the Constitution is the "right to fair...possession...of **moveable** or **immoveable property**."¹¹⁵ More specifically, the land law draft **provides that "[f]oreign states, thcir [l]egal and natural** persons], and people without citizenship, may possess the land by lease or **concession**."¹¹⁶ Thus, although their land rights are

¹¹³"**Citizens** shall exercise their right to possess the property of enterprises established by uniting their private capitals through either representing organizations or by themselves ." **Civil Code, art. 94.**

¹¹⁴**Civil Code, art. 64.** Note that this provision does not **specifically refer to land.**

¹¹⁵**Const. art. 16 (3).** The term "**fair**" is not defined. The term "**immoveable property**" is defined by the Civil Code as "**the land and buildings.**" Civil Code, art. 62. However, "**Other properties except movable ones are real property.**" Id. It seems that these legal concepts have been misapplied by the drafters of the revisions to the Civil Code. In Western legal systems, the distinction is either between real and personal property, or between immovable and movable property, where real or immoveable generally refers to land and **buildings, and pcrsonal or movable** applies to other property. The Constitution, in distinguishing between **moveable** and immoveable property, avoids the Civil Code's **apparent mistake. See, e.g., Const. art. 16 (3).**

¹¹⁶**Draft, art. 10 (3).** Similarly, the Constitution states that the "State may allow foreigners, legal persons and [persons without citizenship] to rent and lease plots of land..." Const. art. 6 (5).

not clearly guaranteed, these persons apparently have the possibility of possessing land in Mongolia.

2. Transfer of Land Rights. The Constitution guarantees the right of Mongolian natural persons to "fair acquisition... of moveable or immoveable property."¹¹⁷ One way a Mongolian natural person can acquire land is from the state. According to the Constitution, "The State may give for private ownership plots of land except pastures," land for common possession, and land for special state **needs**¹¹⁸ "only to the citizens of Mongolia."¹¹⁹ The land law draft specifies that "state-owned land may be sold to the citizens of Mongolia for private ownership."¹²⁰

¹¹⁷Const. art. 16 (2).

¹¹⁸For an explanation of these land categories, see supra, note 165 and accompanying text.

¹¹⁹Const. art. 6 (3). Art. 4 (3) of the land law draft tracks the language of art. 6 (3) of the Constitution.

¹²⁰**Draft** art. 13 (1). The phrase "**may** be 'sold for private ownership" [emphasis added] is significant. The drafters of the land law purposefully avoided use of the word "privatization." According to **them**, that term refers to the "giving away of property," the technique used to transfer state assets to private owners under the Law on Privatization of Property, under the administration of the Government Privatization Commission. According to the drafters, this privatization scheme, while **extremely speedy**, is widely viewed as having **been chaotic and** having bred corruption and inequity. Thus, privatization has become a "dirty word." As a result, the word is avoided, both to avoid the negative association with prior privatization programs, and to emphasize the point that land is to be sold rather than given away. Working Group meeting, Mar. 16, 1992. Others, however, still favor a "give-away" using vouchers. Interview with Byaraagiin Chimid, Secretary, **Baga** Hural, and Deputy, Great People's Hural, in Ulaanbaatar, Mongolia (Mar. 13, 1992).

Mongolian natural persons may apply for land ownership to the competent state authority at the appropriate level of government; the state authority then must decide within 30 days whether to sell land to the **applicant**.¹²¹ The draft land law does not state whether the price of land under this procedure will be determined by the market or **otherwise**.¹²² Further, there is no indication as to the criteria on which decisions to approve or reject applications will be based, and no guarantee that applications will be considered in good **faith**.¹²³

Possessory rights to state-owned land may also be transferred to Mongolian persons. The land law draft provides

¹²¹**Draft**, art. 13. The "competent state authority" is not defined. The "appropriate level" refers to the administrative level of government which manages the land in question. For discussion of administrative units, see supra notes 96-99 and **accompanying text**.

¹²²**For** example, land might be auctioned. Alternatively, prices might be set by the State. In selecting a price mechanism, one must keep in mind the absence of a developed land market in Mongolia. The examples of Central and East European land privatization schemes are interesting models to consider. Note, however, that the draft does state that the "Government of Mongolia will define procedures for the valuation of land." Draft, art. 8. This provision does not refer explicitly to the art. 13 procedure, nor does art. 13 refer to art. 8. Therefore, it is uncertain who has the authority to determine the pricing mechanism for the sale of state-owned land to private citizens.

¹²³**Another** area of uncertainty relates to a Civil Code provision which states: "When the right of ownership to buildings, houses and fences located on state-owned land is transferred, the right of ownership to and use of land is also transferred." Civil Code, art. 79. Neither the Constitution nor the land law draft refers to such transfers. Thus, except when inconsistent with provisions of the Constitution or the land law, art. 79 is likely to be legally operative.

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that land may be transferred to Mongolian legal or natural persons based on leases of up to 60 **years**.¹²⁴ Lease applications must be submitted to the Governor of the appropriate level of **government**;¹²⁵ a decision on the application then must be made within 30 **days**.¹²⁶ As with respect to sales of state land, the draft does not explain how rent will be determined, and how decisions will be made on applications. The state may also transfer possessory rights, by lease or concession, to foreign legal or natural persons, and to persons without citizenship, according to procedures to be determined by the Great **Hural**.¹²⁷

Private land owners in Mongolia may transfer ownership or possessory rights in their land to "other persons," but only with the permission of the State competent **organization**.¹²⁸ Notice of agreements to transfer possession must be given to, and sales contracts must be approved and certified within 21 days of a request by the state competent authority at the appropriate level

¹²⁴**Draft**, art. 10 (1).

¹²⁵**For** discussion of Mongolia's government structure, including governors at various levels, see supra, notes 96-99 and accompanying text.

¹²⁶**Draft**, art. 10 (2).

¹²⁷**Draft**, art. 10 (3). This provision closely follows art. 6 (5) of the Constitution.

¹²⁸**Draft**, art. 15. "**State** competent organization" is not defined.

of **government**.¹²⁹ Ownership rights may not be transferred to foreigners;¹³⁰ but rights to possession may be transferred to foreigners with the permission of the state competent **organization**.¹³¹ Possessors of state-owned land may not transfer their possessory rights to **others**.¹³²

Under the Civil Code, the rights to the fruits of the land follow ownership rights unless otherwise provided by law or agreed by **contract**.¹³³ Further, the Civil Code provides that the right of land ownership emerges at the moment land is assigned to the receiving person and **the necessary** documents are **signed**.¹³⁴ Possessory rights are transferred by written

¹²⁹**Draft**, art. 15 (1), (2). The "competent authority" is not defined.

¹³⁰**Draft**, art. 15 (3). The Constitution, however, seems to leave open ~~this~~ possibility; **"It** shall be prohibited to the citizens to transfer the land in their possession to foreigners.. .by way of selling, bartering,...without permission from the competent state bodies." **Const. art. 6 (3)**. **If** "land in their possession" includes land privately owned by Mongolians as well as state-owned land possessed by Mongolians, then it seems that if state permission were granted, ownership rights could be transferred to foreign persons. Thus, it is possible that while prohibited by the draft land law, the Constitution does not absolutely preclude foreigners from owning land in Mongolia.

¹³¹**Draft**, art. 15 (3). "State competent organization" is not defined.

¹³²**Draft**, art. 11 (2). **In** other words, state-owned land may **not be** sublet.

¹³³**Civil Code**, art. 78.

¹³⁴**Civil Code**, art. 77. The necessary documents are not specified.

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leases, the terms of which are agreed upon by the parties, except that a land lease must be for a term of not less than fifteen years.¹³⁵

The right to inherit land is somewhat uncertain. The Constitution guarantees "the right to fair...inheritance of moveable or immoveable property."¹³⁶ The draft land law, however, only refers to inheritance in a provision which prohibits leaving land for inheritance by foreigners.¹³⁷ While the Civil Code also speaks to the issue of inheritance, it does not recognize the inheritance of land.¹³⁸

3. Protection of Land Rights. The Constitution requires that the State protect the rights of owners, and provides that these rights can be limited only by due process of law.¹³⁹ Further, the Constitution prohibits the "illegal confiscation of private property of a citizen."" The

¹³⁵Civil Code, art. 198. It is unclear whether this provision also applies to leases between the state and private citizens.

¹³⁶Const., art. 16 (3).

¹³⁷Draft, art. 15 (3).

¹³⁸Civil Code art. 375, et seq.

¹³⁹Const. art:5 (2), (3).

¹⁴⁰Const. art. 16 (3). This paragraph goes on to allow the State to expropriate private property "if needs of the society so require" and the owner is compensated "duly." The paragraph neither elaborates upon what is meant by "needs of society," nor does it explain the term "duly." In any case, this is enabling language, rather than language which limits State action; the State is not expressly prohibited from expropriating land in ways

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Constitution, however, does not define the rights of owners which are to be protected; nor does it define "due process of law." Because the Constitution does not define these concepts, the constitutional prohibition of "illegal confiscation" merely means that the confiscation must comply with legislation, in other words, that land may be confiscated according to whatever laws might be passed. Therefore, the Constitutional protection of land ownership rights is weak, and subject to legislative changes.

Existing legislation, however, along with the draft land law, provide more complete protection of land rights. According to the Civil Code, "Regardless of the type and form of property, the State shall secure legal, economic and other appropriate conditions for the protection of the right to property and **guarantees of this right.**"¹⁴¹ To enforce land rights, possessors and owners can either submit petitions to a State body,¹⁴² or approach the courts.¹⁴³

The land rights of foreign persons benefit from less protection. Under the draft land law, foreign possessory rights

other than provided by this paragraph.

¹⁴¹**Civil** Code, art. 103. Subsequent provisions go on to define the rights of owners vis à vis others.

¹⁴²**Const.** art. 16 (12). "State body" is not defined.

¹⁴³**Const.** art. 15 (14).

are subject to procedures determined by the Great Hural.¹⁴⁴ The Constitution offers no specific protections for foreign land rights. The rights to "fair acquisition, possession and inheritance of **moveable** or immoveable property" apply only to **Mongolian citizens**.¹⁴⁵ However, "All persons lawfully residing in Mongolia are equal before law and **court**;"¹⁴⁶ therefore, foreigners apparently can at least seek judicial protection of whatever land rights they have under legislation and contract, even if they are not Mongolian citizens, as long as they legally **reside in Mongolia**.¹⁴⁷

4. Termination of Land Rights. The Constitution gives the State considerable powers to terminate private land rights. Three situations are expressly provided in which the State can expropriate private land. No constitutional language, however, prohibits land from being expropriated in other situations, with or without compensation. Under the first express situation, the State has the right to exchange or take over private land with

¹⁴⁴Draft, art. 5 (c).

¹⁴⁵Const., art. 16.

¹⁴⁶Const. art. 14 (1).

¹⁴⁷The conditions in which foreign legal persons (i.e. businesses incorporated under the law of a country other than Mongolia) are "residents" of Mongolia under Mongolian law will **determine how helpful this provision will be for foreigner corporate holders of Mongolian land rights.**

compensation if the State special needs so **require**.¹⁴⁸ The type and amount of compensation is not specified. Second, the State may confiscate land "if its exploitation and use contradict with the health of the population, the interests of environmental **protection and national security**."¹⁴⁹ Third, "The State and its bodies may expropriate private property if needs of the society require and they shall compensate it **duly**."¹⁵⁰ Neither "needs of the society" nor what it means to compensate "**duly**" is defined.

Like the Constitution, the land law draft offers a number of mechanisms whereby private land may be expropriated, but does not prohibit other forms or methods of expropriation. First, the draft provides that by decision of the yet-to-be-defined "state competent authority," privately owned land may be expropriated **for common use and special State needs**.¹⁵¹ Owners and possessors are required to relinquish their rights to such land

¹⁴⁸**Const.** art. 6 (4). It is not clear how this provision relates to art. 5 (1) (a) of the land law draft which provides that the Great Hural may determine the lands for State special needs.

¹⁴⁹**Id.** Note the use of the word "and" in this provision. If this is not a mere translation error, this provision is not as broad as it initially appears: in order for the State to use this mechanism, the land use would have to contradict health and environmental interests and national security.

¹⁵⁰**Const.** art. 16 (3).

¹⁵¹**Draft**, art. 6 (1).

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within six months of notification of a decision to **expropriate**.¹⁵² Both owners and possessors are to be compensated at market value, or given new land to be owned or **possessed**.¹⁵³

Second, private possessory rights may be terminated in case of the death or bankruptcy of the possessor; as a result of land disuse over a certain period without sound reason; and on any other grounds stipulated by law or **contract**.¹⁵⁴ The former possessor must be "compensated for the value of this real **property**" unless otherwise stipulated by contract.¹⁵⁵ **Third,** land may be expropriated in case of certain land law violations by owners or **possessors**.¹⁵⁶

Finally, ownership rights may be terminated if the owner

¹⁵²**Draft**, art. 6 (2).

¹⁵³**Draft**, art. 6 (3), (4). Notice the problems this compensation scheme creates. For example, if the owner desires compensation in money, but the possessor wants new land to possess, the State would essentially have to double-compensate, offering both money (to the owner) and land (to the possessor).

¹⁵⁴**Draft**, art. 12 (1).

¹⁵⁵**Id.** This provision applies to state-owned land privately possessed; whether or not it applies to termination of possessory rights in privately-owned land is unclear. This provision is found, however, in "Part **Two**" of the draft, entitled "State-Owned Land." This suggests that the provision only refers to **state-owned** land, thereby limiting the scope of this provision.

¹⁵⁶**Draft**, art. 29 (4), 30 (1).

uses land "**improperly**."¹⁵⁷ Expropriation in this case can only take place after a warning that the improper uses must be discontinued, and after the court renders a judgment ordering expropriation on a claim by the competent state **authority**.¹⁵⁸ Unless otherwise specified by legislation, compensation must be provided for the land's market **value**.¹⁵⁹

With the exception of the final situation for expropriation, for improper use, there is no mechanism whereby the judicial system might be involved in a decision to terminate land rights. Thus, whether or not the decisions by state authorities on expropriation and compensation are reviewable by the courts in these other situations is unclear. Further, there is no specific procedure whereby owners or possessors can appeal these decisions.

B. Land Protection and Land Use

1. Land Policy. The formulation of land policy is the

¹⁵⁷**Draft**, art. 16 (1). "Improperly" is defined as "endangering the health of the population, the environment, or national security." Id. This language is **similar** to that in art. 6 (4) of the Constitution. See supra note 153 and accompanying text.

¹⁵⁸**Draft**, art. 16. The competent state authority is not defined. According to a representative from the Ministry of Justice, a "claim" to the court entails a trial, with the defendant having the right to legal representation. Comments of S. Surenjav, Chief, **Legislation** Branch, Ministry of Justice, at Working Group meeting, Mar. 19, 1992.

¹⁵⁹**Draft**, art. 16 (2).

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responsibility of the **Government**.¹⁶⁰ The land law draft itself, however, reflects the very aggressive land protection policy ideas of its **drafters**.¹⁶¹ According to the land law, land protection aims at creating "favorable natural, social and economic conditions directed at attaining a global ecological balance through the proper utilization of land, the rational treatment of national reserves, and by limiting the burden caused by human and economic activities that might have a negative impact on land."¹⁶² More specific objectives include preserving the land's "natural ability for restoration" and protecting soil from erosion and **pollution**.¹⁶³ Further, the Constitution establishes the right to a "healthy, safe environment, [and the] right to be free from environmental pollution, [and] ecological imbalance."¹⁶⁴

2. Management of State Land. The land law draft divides the territory of Mongolia into four categories: land for common possession (for example, public parks, streets and highways, communication facilities), land for special State needs (for example, border areas), land for possession by entities and

¹⁶⁰**Draft**, art. 5 (2) (a).

¹⁶¹The land law was drafted by the State Committee for Nature and Environmental Protection (Mongolia's environmental ministry).

¹⁶²**Draft**, art. 20.

¹⁶³**Draft**, art. 21.

¹⁶⁴**Const.** art. 16 (2).

citizens, and State reserve land (sowing and haying areas for use in times of drought or other shortages, cattle-driving tracts).¹⁶⁵ With respect to land management, however, the draft land law refers to "state-owned land" and "land owned by citizens" rather than to one of these four categories.

Under the land law draft, "The state authorities of Mongolia... shall possess, use, and manage state-owned land."¹⁶⁶ The aimag, capital, soum, and district representative hurals possess, use and manage state-owned land in their administrative jurisdictions.¹⁶⁷ The Great Hural, however, is permitted to change the boundaries of aimags, capital, soums and districts.¹⁶⁸ This appears to be consistent with the constitutional principles of "self-government and central guidance."¹⁶⁹

The land law requires that a land "record book" be maintained. Information to be gathered includes the land's natural condition, its size, quality and economic potential, its price and rent, and its utilization.¹⁷⁰ This information is to

¹⁶⁵Draft, art. 3. Land for special State needs is determined by the Grand Hural. Draft, art. 5 (1) (a).

¹⁶⁶Draft, art. 4 (2).

¹⁶⁷Draft, art. 5 (3) (a).

¹⁶⁸Draft, art. 5 (1) (b).

¹⁶⁹Const., art. 59 (1).

¹⁷⁰Draft, art. 20.

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be classified according to the type of ownership and possession, by administrative unit, and by **use**.¹⁷¹ This record book scheme is quite ambitious, combining qualities of both a cadastral survey and a registration system. Recording price and rent seems impractical, since these **amounts** will presumably fluctuate over time and from agreement to agreement. Recording information on the condition of land, however, might serve as a useful foundation for a land protection regime which makes owners responsible for remedying environmental **damage**.¹⁷²

3. Land Use Regulation and Control. The use of privately owned land is subject to various rules backed by land right termination provisions and fines, certificate and permit schemes, and direct state control. Use of state-owned land is regulated by leases, which "shall stipulate...the use of the land; its size, fertility, and **characteristics**."¹⁷³ **Possession** may be terminated as a result of non-use of the land over a

¹⁷¹**Id.**

¹⁷²**Due** to the lack of private ownership, there was never a need for a Western-style **land registration system**. **The results** of land studies have been periodically recorded since 1975. These studies identified the various land classifications under the socialist real property regime, supra notes 21-22 and accompanying text, for each administrative unit, but did not identify parcels of land. Arable land registration was very rudimentary, and no comprehensive study on grazing land has been undertaken. The system in general has not been properly maintained since 1989. Working Group meetings, Mar. 13, 1992, Mar. 20, 1992.

¹⁷³**Draft**, art. 10 (2).

period of 18 months **without a valid reason.**¹⁷⁴ **Further,** ownership rights can be terminated if land is used improperly, if its fertility is diminished, or if it is exposed to **erosion.**¹⁷⁵

Fines may be imposed on those responsible for soil erosion **and decreased fertility,** or **if** an activity on the land "contradicts the interests of society and its **people.**"¹⁷⁶ Cultivation of land, cutting of hay, animal grazing or other activities which damage natural beauty, unique landscapes, or soil may also be grounds for imposition of **fines.**¹⁷⁷

Before **implementing a land use project**¹⁷⁸ **introducing** industrial technology or applying chemicals and fertilizers, an ecological analysis certificate shall be obtained, and advance notice given to local authorities and to the public of any intent **"to** construct buildings and locate equipment that might negatively affect the ecological balance or the health of people and **animals.**"¹⁷⁹ Further, "advice" on land use issued along with the certificate must be followed by the owner or

¹⁷⁴**Draft,** art. 12 (1) (d).

¹⁷⁵**Draft,** art. 16 (1). See also **supra**, note 157 and accompanying text.

¹⁷⁶**Art.** 28 (1) (a).

¹⁷⁷**Draft,** art. 28 (1) (c).

¹⁷⁸**The** meaning of the term "project" was debated at the Working Group meetings. Some members argued that it refers to large construction projects; others said the term might include agricultural activities. Working Group meeting, Mar. 20, 1992.

¹⁷⁹**Draft,** art. 22 (1).

possessor.¹⁸⁰ Although required before developing land, exactly what obtaining a certificate entails is not specified by the draft.

Whenever land rights are transferred, and at other times deemed necessary, land conditions are to be **verified.**¹⁸¹ The new owner or possessor has the right to receive certification of the land's quality, size and other **characteristics.**¹⁸²

Direct state control of land use takes a number of forms. First, land possessors and owners are required "to follow instructions and recommendations issued by the state competent authority on land **use.**"¹⁸³ Neither the procedure for issuing these instructions and recommendations, nor the state competent authority, is defined.

Second, the governor at the appropriate level of government may limit the number of animals per unit of land if it is ascertained that soil and vegetation is being **damaged.**¹⁸⁴ Finally, the State may stop use of land for a certain period "if

¹⁸⁰**Draft**, art. 28 (1) (b); Comments by Dr. Gongoriin Purevtseren, Director, Research Institute for Land Policy, at Working Group meeting, **Mar. 21, 1992.**

¹⁸¹**Draft**, art. 23, 24.

¹⁸²**Draft**, art. 11 (1), 14(1). This procedure was explained in more detail by Dr. Gongoriin Purevtseren, Director, Research Institute for Land Policy, at Working Group meeting, Mar. 20, 1992.

¹⁸³**Draft**, art. 11 (5), art. 14 (4).

¹⁸⁴**Draft**, art. 22.

it is ascertained that the land owners. or possessors have exposed their fields and meadows to erosion or wear and tear, or [reduced] fertility," or if an activity is polluting the land.¹⁸⁵ These provisions do not provide procedural mechanisms, **criteria for decision making, or processes for** appeal with respect to state control of land.

4. Obligations of Owners and Possessors. A variety of obligations are imposed on owners and possessors of land. First, owners and possessors are required **"to** make proper use of the land, to protect it, and to take measures to improve its characteristics and **fertility."**¹⁸⁶ "Proper use" is not defined. Further, this language creates an affirmative duty not only to maintain the quality of the land, but to actually improve it. Among the problems that arise from these obligations is the **possibility that the owner might reap** windfalls by suing lessees to force them to improve land even when such improvements were not provided for in the lease. Whether the owner's obligations continue while the land is being leased is also uncertain. If these obligations do continue, the problem arises as to how the **land improvement responsibilities of the owner and possessor are** to be divided.

Owners and possessors may also bear responsibility for remediation costs. If improper use of land results in reduced

¹⁸⁵Draft, art. 29.

¹⁸⁶Draft, art. 11 (4), 14 (3).

fertility or to erosion, the owner may have to compensate the State for these damages or restore the land him or **herself**.¹⁸⁷ Under a general provision of the land law draft, "Entities and citizens shall [provide reimbursement for] damages caused to the land. . ." ¹⁸⁸ This provision apparently **applies not** only to owners and possessors, but also to any other persons responsible for damage to land.

C. Enforcement and Dispute Resolution

1. Imposition of Penalties. Penalties for land law violations include fines, payment for remediation or reimbursement for property damages, and termination of land rights with or without compensation." Some of these penalties are to be imposed by the courts, although it is unclear whether this requires a trial before there is a judicial **order**.¹⁹⁰ Other penalties, however, are imposed "by the employees

¹⁸⁷**Draft**, art. 16. This provision apparently does not apply to possessors. See also **Draft**, art. 29.

¹⁸⁸**Draft**, art. 32. This provision does not indicate to whom the reimbursement must be given.

¹⁸⁹See Part Seven of the land law draft, "Responsibilities Borne by the Violator of the Legislation." The Constitution provides a legal basis for the power to impose penalties for land law violations: "The State shall have the right to hold responsible the landowners in connection with the manner the land is used..." Const. art. 6 (4). The land law draft makes no reference to criminal penalties. According to the drafters, the criminal code will address the issue of criminal sanctions for land law violations. Working Group meeting, Mar. 21, 1992.

¹⁹⁰**Draft**, art. 28. The language used is "...shall be imposed by the judge at the court." No reference is made to a hearing or trial.

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responsible for land issues in the aimag, capital and local
administrations."¹⁹¹ No procedure is provided for determining
violations; rather, inspectors make these determinations
independently on a case-by-case **basis.**¹⁹²

Further, the land law draft does not provide a mechanism for
appeals of these determinations. Rather, the draft states that a
"decision made by an official entitled to regulate land
relations, contradicting the Land Legislation of Mongolia or
abusing his position may be cancelled by an official or
administration of a higher instance, based on the conclusion made
by a professional **organization.**"¹⁹³ This provision does not
allow persons found to have violated the land law to appeal that
finding; it simply allows higher officials to review the
decisions of 'lower officials. In addition, the draft does not
explain what "**a professional organization**" is, and how one is
selected for the purposes of this provision.

Three Constitutional provisions might be invoked to help
prevent arbitrary administration of land law penalties. First,
Mongolian citizens have the right "to seek and receive
information except that relating to secrets which the State and

¹⁹¹**Draft**, art. 28.

¹⁹²**Comments** of Dr. Gongoriin Purevtseren, Director, Research
Institute for Land Policy, at Working Group meeting, Mar. 21,
1992. Although not provided for in the land law draft, he
explained further that determinations by inspectors may be
appealed.

¹⁹³**Draft**, art. 31.

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its bodies shall protect according to law."¹⁹⁴ This right might be asserted to encourage bureaucratic openness and accountability with respect to the various enforcement and approval procedures provided for by the land law draft.

Second, according to the Constitution, citizens of Mongolia have the right "to submit petitions and complaints to State bodies and officials. The State bodies and officials shall be obliged to solve the petitions or complaints of citizens in conformity with law."¹⁹⁵ Third, a Mongolian citizen has the right "to approach the court to protect his or her rights if he or she considers that rights or freedoms defined by Mongolian Law or international treaty have been violated."¹⁹⁶ These procedures might be used in cases where the land law itself does not allow an appeal. The problem is finding rights to assert; the land law draft creates few rights other than the uncertain and limited right to own land. In particular, the draft does little to limit state power vis à vis land owners.

2. Dispute Resolution. Disputes over property rights are to be settled by the courts.¹⁹⁷ The land law, however,

¹⁹⁴Const., art. 16 (17).

¹⁹⁵Const., art. 16 (12).

¹⁹⁶Const. art. 16 (14).

¹⁹⁷Draft, art. 25. This apparently does not represent a departure from past practice. According to one commentator, among the civil disputes most frequently brought before the Mongolian courts are property disputes. W.E. BUTLER, supra note 38, at 81.

provides a mechanism for the settlement of land use **disputes**.¹⁹⁸

Disputes are to be settled at three different levels: those arising within a soum or a district are to be settled by the local governor; those arising between soums and districts are to be settled by the governor of the aimag or the capital, depending on the location of the soums or districts involved in the dispute; and disputes between aimags or between the capital and an aimag are to be settled by a Central Administrative **Body**.¹⁹⁹

The terms of a settlement rendered by one of the first two **levels** may be appealed to the next higher **level**;²⁰⁰ no procedure is provided for appeals decisions made by the Central Administrative Body. No decision may be implemented until the appeal has been **reviewed**.²⁰¹

D. Summary and Conclusions

Under the new framework for land rights and land **protection**

¹⁹⁸**Draft**, Part Six, "Settling Land Disputes." The language used in the land law draft is simply "land disputes;" however, the Chief of the Legislation Branch of the Ministry of Justice, S. Surenjav, explained that this term refers solely to disputes over land use, and the term "property dispute" used in art. 25 refers to disputes over property rights, such as ownership and possession. Working Group meeting, Mar. 20, 1992,

¹⁹⁹**Draft**, art. 25. "State Central Administrative Body" is not defined. It is **uncertain** what the rights of individuals are under this mechanism. One official has interpreted the land law dispute settlement procedure as being available only to administrative units, and not to individuals. Interview with B.Chimid, supra note 120.

²⁰⁰**Draft**, art. 27.

²⁰¹**Id.**

Whytock, Mongolia in Transition that would exist with the enactment of the proposed law on land, the State will continue to play a large role as an owner and decision-maker. Seventy-seven percent of Mongolian land is designated as pasture land for animal **grazing;**²⁰² yet neither the Constitution nor the land law draft enable the State to transfer ownership rights to this land to private **persons.**²⁰³ Further, there is not a stated policy in favor of land privatization; indeed, there seems to be considerable skepticism with regard to **privatization.**²⁰⁴ Therefore, most land will continue to **be owned and managed by the State. The State also** will play a major role in relation to privately owned land through certificate and permit schemes and direct control of private land **use.**²⁰⁵

Ownership is often conceived as a "bundle" of rights, **including the freedom to use and dispose of an object as the**

²⁰²Supra, note 21-22 and accompanying text.

²⁰³See supra notes 117-138 and accompanying text. Note, however, that neither the Constitution nor the land law draft prohibit private ownership of pasture land; they simply do not provide a mechanism for privatization of pasture land. Theoretically, a law authorizing privatization of pasture land would not be unconstitutional. Further, under art. 4 of the Law on Land Use, reprinted in W.E. BUTLER, supra note 38, at 526, **land may be transferred from one category to another. Thus,** pasture land apparently could be re-categorized as land for crop production, for example, and then privatized.

²⁰⁴**This** opinion is based on observations made at the Working Group meetings. For a more complete discussion of this skepticism, see infra notes 211, 221 and accompanying text.

²⁰⁵See supra note 173-185 and **accompanying** text.

owner chooses. The "bundle" of land rights. under the new framework will be incomplete in a number of ways. First, the freedom of owners and possessors to use their **land will** continue to be severely limited. Individual decisions on land use are **subject to a number of requirements, including the granting of an** ecological analysis certificate, State approval of certain land use decisions, and land use instructions issued by the **State.**²⁰⁶ Second, transfer of land rights will continue to be restricted. Land sale agreements must be approved and certified by the State. Transfer of land ownership rights to foreigners is prohibited, and transfer of possessory rights to foreigners is subject to State approval. Further, possessors of state-owned land may not transfer their rights to **others.**²⁰⁷

In addition, because rights to possess and own land may be **terminated in a number of situations, often according to no set** procedure and with no mechanism for **appeals,**²⁰⁸ land rights will continue to be somewhat insecure as well as incomplete under the new framework. Land inheritance rights are also uncertain;"' therefore, an owner or possessor cannot be sure that the **investments he or she makes in land will be passed on to his or** her family. The weakness of constitutional guarantees of land

²⁰⁶See supra notes 173-185 and accompanying text.

²⁰⁷See supra note 132 and accompanying text.

²⁰⁸See supra notes 148-160 and accompanying text.

²⁰⁹See supra notes 136-138 and accompanying text.

rights adds to this insecurity.²¹⁰

Both the insecurity and incomplete nature of land rights will reduce the effectiveness of the incentives that result from a land regime based on private ownership. The apparent ease with which the State can terminate 1 and rights creates uncertainty that discourages investment in, development of, and personal commitment to a plot of land. Further, state control of land use will severely limit the role of individual decision making, thereby restricting the development of an ethic of individual responsibility for efficient and environmentally sound land use.

²¹⁰See supra notes 139-141 and accompanying text.

IV. ANALYSIS OF ATTITUDES

Many aspects of the legal framework for land rights and land protection can be explained by the attitudes of the land law drafters toward reform, and the legislative process itself.

First, there appears to be a genuine fear that a market-oriented economy will lead to wide-spread environmental degradation. One official commented that the contradictions of the market will inevitably lead to ecological disaster, and that Mongolia is committed to avoiding such an outcome.²¹¹

There is also some skepticism with respect to contracts. Doubts exist as to whether private contracts are sufficient to protect the rights of possessors.²¹² Further, some drafters feel that legislative provisions are necessary to prevent certain uses of state land because contractual provisions on land use would not be effective.²¹³ Part of this skepticism is probably due to the prior use of contracts primarily in the context of central planning and state production orders, and the lack of experience in using private contracts to regulate relationships between individuals.²¹⁴

Related to these doubts about contracts is a belief that

²¹¹Working Group meeting, Mar. 20, 1992.

²¹²Working Group meeting, Mar. 18, 1992.

²¹³Working Group meeting, Mar. 19, 1992.

²¹⁴For a discussion of socialist contract law as practiced in Mongolia, see W.E. BUTLER, supra note 38, at 497-504.

individuals are not as capable of making land use decisions as the State. As one expert explained, referring to agrarian practice, there are no true farmers in Mongolia. Rather, as a result of the "industrialization of agriculture," a policy common to a number of socialist agrarian systems, they are workers, each knowing how to perform specific tasks, but none knowing how to run a farm. Therefore, at least in the agrarian sector, State experts must continue to guide land use.²¹⁵

Further, there is a fear that without pervasive control of land use by private individuals, crop production will decline to unacceptably low levels. Crop production is a relatively recent phenomenon in Mongolia around which no tradition has developed.²¹⁶ Only with strict orders from the State did crop production become a significant part of the economy during Communist rule.²¹⁷ According to one official, 170 thousand hectares of previously cultivated land have been abandoned since the economic reforms of 1989 began.²¹⁸

²¹⁵Comments of the Dr. Gongoriin Purevtseren, Director, Research Institute for Land Policy, at Working Group Meeting, Mar. 21, 1992.

²¹⁶Comments of Tseveenjavyn Uuld, Deputy of the Baga Hural and Great People's Hural and Member, Standing Committee on Economic Affairs, at Working Group meeting, Mar. 19, 1992. Dr. Uuld further remarked: "In the U.S., people fight for a meter of land. Here, people will run from it." Id.

²¹⁷For a more detailed discussion of the development of crop production in Mongolia, see supra notes 43-44, 66-72 and accompanying text.

²¹⁸Id.

Allowing foreign investment in arable land would be one way to mitigate the problem of insufficient crop production. Foreign ownership of land is, however, **forbidden**.²¹⁹ Further, current attitudes are for the most part opposed to foreign possession of land, although leases to foreigners are not prohibited if approved by the **State**.²²⁰

The **agrarian and** environmental emphasis of the land law draft can be partially explained by the fact that the draft originated at the State Committee for **Nature** and Environmental Protection. Further, among the most active participants in the meetings of the Land Law Working Group were the representatives from the Land Policy Institute and the State Committee for Nature and the Environment. A representative of the Ministry of Justice expressed some misgivings about the process by which the land law **draft has evolved, saying that it is excessively biased toward** environmental concerns at the expense of the protection of land rights and economic **considerations**.²²¹ Apparently the Ministry of Justice envisioned a land law that would deal exclusively with land rights and a separate law to address land use and land

²¹⁹See supra notes 107-114 and accompanying text.

""Observations made during Working Group meetings, especially during Mar. 19, 1992 on foreign ownership. For a discussion of attitudes toward foreigners, see also supra note 38 and accompanying text.

²²¹**Comments** of S. Surenjav, Chief, Legislative Branch, Ministry of Justice, at Working Group meeting, Mar. 21, 1992; and Interview with Mr. Surenjav, in Ulaanbaatar, Mongolia (**Mar. 20, 1992**).

protection issues.

A number of aspects of the land law draft reflect a bias against legal persons as land owners. First, nowhere is a right explicitly established for legal persons to own land; transfer of state-owned land to legal **persons is prohibited.**"²²² Second, penalties for land law violations are more severe with respect to legal persons than natural **persons.**²²³ Some of the drafters seem to recognize that such discrimination discourages one approach to productive land use, and is a disincentive to those **wishing to use land productively, but who are unable to do so individually.**²²⁴

The prevailing attitude, however, is that legal 'persons are "unreliable" owners, using land only for profit, and appearing and disappearing frequently over time, due to bankruptcy or voluntary **dissolution.**²²⁵ With respect to the harsher penalties imposed on legal persons, one official explained that this is necessary because legal persons are more "rich," and will not be deterred by fines unless they are higher than those for natural

²²²See supra notes 117-123 and accompanying text.

²²³**Fines** to be imposed on natural persons range from 300 to 2000 tugriks, with a fine of 10,000 tugriks possible in one situation. In contrast, fines to be imposed on legal persons range from 10,000 to 20,000 tugriks. See Draft, art. 29.

²²⁴**Working** Group meeting, Mar. 21, 1992.

²²⁵**Working** Group meetings, Mar. 16, 1992, Mar. 23, 1992.

persons.²²⁶ Although these characteristics generally are not a function of whether an entity is a legal or natural person, the bias against legal persons appears to be quite persistent.

²²⁶**Comments** by S. Surenjav, Chief, Legislative Branch, Ministry of Justice, at Working Group meeting, Mar. 21, 1992.

V. RECOMMENDATIONS

A fair assessment of the new framework for land rights and land protection must take into account the absence of a strong tradition of private land ownership, the difficult agrarian **situation resulting from climate and geography as well as the** influence of nomadic traditions, and the political situation which is characterized by continued strength of parties which are not entirely supportive of, or even opposed to, reform.

The purposes of the land law as stated in the draft must **also be considered: "To regulate issues related to ownership, possession and the protection of land."**²²⁷ The land law draft certainly addresses these purposes. However, from a broader policy perspective, in the context of Mongolia's transition to a market-oriented economy, it is apparent that a number of changes **should be made to the land law draft before it is enacted. The** following suggestions are aimed at strengthening the positive incentives of private ownership by completing the content of and **increasing** certainty in private land **rights.**²²⁸

Two kinds of changes should be made to complete the content of land rights. First, State control of land use should be reduced, and individual decision-making **encouraged.**²²⁹ As individual responsibility increases, land owners individually

²²⁷Draft, art. 1.

²²⁸(footnote deleted)

²²⁹(footnote deleted)

Whytock, Mongolia in Transition will reap the benefits of efficient and sustainable use, and bear the costs of unsound use. Thus, efforts to use the land efficiently and sustainably will **increase**.²³⁰

One fear expressed by Mongolian policy-makers is that State **control is necessary because citizens do not possess the** knowledge necessary for proper land **use**.²³¹ A preferable alternative to State control is to offer extension services and training, under the assumption that owners' that are individually responsible for their land will apply knowledge that will allow **them to use their land more efficiently. Another fear is that** without State control, there will be a lack of crop **producers**.²³² More desirable than State control, however, would be the creation of economic incentives to produce **crops**.²³³

Further, restraints on the transfer of land rights should be **reduced**.²³⁴ **Such restraints reduce the incentive to maintain or** even improve the quality of land with a view to profiting from

²³⁰**In** a centrally planned economy, the primary, if not sole determinant of land use is typically the fulfillment of state orders. Such a system creates powerful incentives to maximize the yield of land during the contract period, but creates no incentive for use which is sustainable over time. To the extent sustainable use is in conflict with yield maximization, state orders are indeed a disincentive for sustainable use.

²³¹See supra notes 214-215 and accompanying text.

²³²See supra notes 216-218 and accompanying text.

²³³**This** idea was suggested by Georges Korsun, Associate Coordinator of IRIS's Mongolia Project. Incentives might include, for example, subsidies and tax reductions.

²³⁴See supra note 210 and accompanying text.

resale. In addition, to facilitate efficient allocation of land, decisions on and the conditions for transfer of land rights should be regulated primarily by private contract. If a smoothly operating land market is to develop, the involvement of the State should be **minimized**.²³⁵

There are at least four general steps that should be taken to help improve the certainty of rights to land. First, rather than, or in addition to, enabling the State to terminate ownership rights in specific situations, the land law should explicitly prohibit expropriation under all other **circumstances**.²³⁶ This would reduce the uncertainty caused by the likelihood of arbitrary or unnecessary termination of land rights. Second, the inheritance of land rights should be explicitly allowed and protected to give owners certainty that their investments in land will be passed on to their **heirs**.²³⁷

Third, a cadastral survey should be undertaken, and a land registration system **established**.²³⁸ The cadastral survey should

²³⁵ Kestraints on transfer also presuppose the existence of bureaucracies to approve and certify private agreements to transfer land. Minimizing State involvement would also reduce the need for such bureaucracies.

²³⁶ See supra notes 148-160 and accompanying text.

²³⁷ See supra notes 136-138 and accompanying text.

²³⁸ **This** procedure can be extremely costly. Georges Korsun, Assistant Coordinator of IRIS's Mongolia Project, has suggested that work on establishing a cadastre and registration system begin by focusing on the relatively small percentage of Mongolian land which is likely to be **privatized**. Considering that over 70% of the country's land is likely to remain state-owned, see supra

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determine the boundaries of land parcels for the purpose of defining ownership rights. The result of the survey should be a **map**, called a **cadastre**,²³⁹ which would provide the foundation for a land registration **system**.²⁴⁰ Each parcel, as demarcated on the cadastre, would be given a number **which** corresponds to its **title**.²⁴¹ Whenever a parcel's owner changes, the old owner's title will be cancelled, and the new owner's title entered in the land register and guaranteed by the **State**.²⁴²

notes 202-203 and accompanying text, this initial task would not be nearly as overwhelming in cost and effort as an immediate and comprehensive cadastral survey.

²³⁹One expert would recommend a "multi-purpose cadastre" which is "a comprehensive set of land records organized in terms of the parcel and is composed of a set of map overlays. Minimally it should contain a description of parcels, provide a record of rights in land (**both** traditional and registered), and be integrated with other maps such as soil, topography, agriculture and land use planning maps." Riddell, Rural Development and the Cadastre: Issues and Examples from Somalia, in FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS, LAND REFORM: LAND SETTLEMENT AND COOPERATIVES 79-87 (1989). A cadastre might also contain such information as land use and capability classifications; tax valuation; slope, drainage, vegetative cover and other physical data. Platt, Cadastral Surveys, 1.

²⁴⁰A land recording system, like that used in many states in the United States, might be used instead of a registration system. For a discussion of the differences between a recording system and a registration system, see Cribbet & Johnson, CRIBBET & JOHNSON, PRINCIPLES OF PROPERTY (1989) 307-312.

²⁴¹Riddell, supra note 239, at 84.

²⁴²CRIBBET & JOHNSON, supra note 240, at 312. A memorial should be attached to the land title which lists **incumbrances**, liens and similar interests. Id. Although registration of environmental conditions of a parcel might be a useful part of a land protection regime, the land register should not contain price or rent information. Price and rent will vary depending on

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The fourth step focuses on process: procedure, principles and specific criteria for decision-making, and appeals. In every situation where the State exercises its power to terminate land rights, specific procedures should be followed to ensure that the decision-making process is open to the public and that alternatives to termination are carefully considered. Further, decisions should be made with certain principles in mind, and according to specified criteria. Finally, a mechanism should be provided whereby a private individual has a right to appeal a state decision to the courts. If the land law requires that open procedures and specific decision-making principles and criteria be used, and creates the right to appeal State decisions, it can increase certainty in land rights by decreasing the chances of arbitrary termination of these rights.²⁴³

The sooner land is privatized, the sooner Mongolia will benefit from the incentives that flow from private ownership. Thus, land which is available for privatization should be transferred to private ownership as soon as possible.²⁴⁴ Land

the market, and thus should be agreed to in a sales contract or lease rather than recorded in the land register. See supra notes 170-172 and accompanying text.

²⁴³This fourth step will also foster perceptions of fairness, increase trust and confidence in the legal system, and help ensure that decisions are accurate and based on the best and most complete information available.

²⁴⁴Recall that pasture land, which accounts for over 70% of Mongolian territory, probably will not be privatized in the near future. See supra notes 202-203 and accompanying text. So less than 30% of land in Mongolia is available for privatization.

privatization should therefore be stated as one of the purposes of the Land Law. Alternatively, the Land Law should state that land **privatization** will be the subject of subsequent legislation, or administered by an government agency created by the Land Law for that purpose.

Such a privatization agency might be part of a larger administrative body which would be responsible for implementing the land law and related legislation.²⁴⁵ The land administration's responsibilities might include promulgating land use regulations, managing state owned land, making decisions on expropriation, of land for public use, negotiating state land leases, supervising a cadastral survey and maintaining a land registration system, coordinating training and extension services, and administering the permit and certificate schemes referred to in the land law draft.²⁴⁶ The land administration

²⁴⁵During meetings of the Working Group, this proposed body was referred to by the author as the National Land Administration.

Professor James Feinerman also has suggested that such an administrative body be created. Further, a number of the more specific recommendations made in this paragraph and the following paragraph, as well as at the Working Group meetings, especially those relating the structure and responsibilities of such a body, were originally made by Professor Feinerman. Professor Feinerman has also raised the question of whether the delegation of the **powers necessary for the functioning of such a body is possible** under Mongolian law.

Apparently, an earlier land law draft, which was **subsequently rejected, included plans for a new administrative body.** Working Group meeting, Mar. 16, 1992.

²⁴⁶Wherever it appears in the land law draft, the term "competent state authority" might be replaced with "National Land Administration," referring to the proposed administrative body.

could also provide a forum for the settlement of certain land disputes.²⁴⁷

The Land Law should clearly state the administration's responsibilities and scope of authority, and establish the mechanisms that will help ensure administrative accountability.²⁴⁸ For example, the Land Law might provide that the land administration operate through local land administrations under its control, and that its decisions shall be subject to judicial review. Administrative accountability could be ensured by a variety of mechanisms, ranging from annual reports to the Great Hural, to vesting the Great Hural or the Government with the power to appoint and remove the administration's head.²⁴⁹

These suggestions and others were made to the Mongolian officials who are finalizing the land law draft.²⁵⁰ While the realization of the benefits of private ownership might appear

Some of the responsibilities referred to in this paragraph might be more appropriately vested in the Ministry of Agriculture or environmental authorities.

²⁴⁷For example, land use disputes referred to in Part Six of the draft land law. See supra notes 197-201 and accompanying text.

²⁴⁸Details relating to the functioning of the land administration could be contained in a separate charter.

²⁴⁹Accountability must be balanced with independence from the "political branches," particularly as long as parties opposed to many of the tasks for which the administration will be responsible remain relatively powerful.

²⁵⁰Working Group Meetings, Mar. 13-23, 1992.

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most important to commentators outside Mongolia, Mongolian officials themselves are much more familiar than foreign observers with the climatic, cultural, geographical, historical and social realities which must be thoroughly considered before a **new framework is erected to govern land rights and land** protection. Therefore, although a sincere attempt has been made to integrate these factors into the conclusions of this paper, the appropriate use of these suggestions cannot be more than simply to animate discussion and to serve as a point of reference **for policy-makers as land legislation is being drafted.**